IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
BENCH AT JAIPUR
S.B. CIVIL WRIT PETITION NO.9880/07
Brij Mohan Dhoot Vs. Ashok Garg & Anr.

Date of order : 3/12/2007.

HON'BLE MR.JUSTICE MOHAMMAD RAFIQ

Shri J.S. Chouhan for the petitioner.

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Heard learned counsel for the petitioner.

The petitioner has approached this Court, aggrieved by the order dated 19.9.07, whereby his application for correction of issue no.3 has been rejected.

Learned counsel for the petitioner has argued that while framing the aforesaid issue, the learned trial court has not correctly appreciated the contents of para 5 of the written statement wherein he nowhere stated

that he has paid the entire amount of Rs.5,20,960 and in addition to that Rs.2,51,000/- as cash and Rs.93,292/- by way of cheque to the plaintiff for the work of courier service and lastly a further sum of Rs.29,888/- by way of shares.

Learned counsel for the petitioner took the Court through the contents of para 5 of the written statement, which has been reproduced in para 4 of the writ petition. Reading of para 5 of the written statement clearly makes it evident that the defendant indeed nowhere stated that he paid entire sum of Rs.5,20,960/- and to that extent the learned counsel for the defendant may not be unjustified. For that purpose however it may not be necessary for this Court to interfere in the matter

because in any case if what the defendant did not plead, he cannot be required to prove that and if the issue is not correctly worded that factor may not work to his prejudice. The arguments in this aspect of the matter can always be made by the defendant even at the time of final hearing, which shall be duly taken note of and considered by the trial court.

I therefore do not deem it appropriate to entertain the writ petition on this issue alone.

The writ petition is dismissed though with the aforesaid clarification.

(MOHAMMAD RAFIQ), J.

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